IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1514 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 & 2 YES; 3 to 5 NO**

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STATE OF GUJARAT & 1 - Applicant(s)
Versus
YUSUF AIYUB MITHA - Respondent(s)

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Appearance :
MR SS PATEL ADDL PUBLIC PROSECUTOR for Applicant(s) : 1,None for Applicant(s) : None for Petitioner No(s).: for Applicant(s) : 2, MR MA KHARADI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 06/12/2006

ORAL JUDGMENT :

1. Invoking Articles 226 and 227 of the Constitution, the petitioner-State has sought to challenge the order dated 24.10.1997 of the

learned Sessions Judge, Panchmahals whereby the appeal of the respondent was allowed and the order of confiscation of the truck belonging to the respondent herein was set aside.

2. According to the original order dated 5.8.1996 of the Deputy Conservator of Forest, the truck bearing registration No.GTK 3049 was held to have been involved in forest offence under the provisions of section 61-B of the Indian Forest Act, 1927 (for short, "the Act") and, in exercise of the powers under section 61-A, it was ordered to be confiscated after affording to respondent-truck owner adequate opportunity of being heard and after elaborate discussion of the issues raised by the respondent. The authorized officer had come to the definite conclusion that the respondent herein was the owner of the truck who had come forward after seizure of the truck and public notice regarding the same. It was found that the teakwood carried in the truck in question was the property of the Government in view of the rebuttable presumption provided under section 69 of the Act and the presumption having not been rebutted. It was noted that the same truck was caught for the first offence of similar nature only about a month ago and it was released after execution of an affidavit by the respondent

stating that the truck will not be involved in any forest offence in future. In view of the findings that the teakwood carried in the truck was not of private ownership, that the truck was involved for the second time in similar offence and no care or precaution was taken to prevent such recurrence of the offence and in the circumstances that the forest produce was transported under the covers by night and the truck was required to be chased and firing was required to be resorted before it could be seized, the order, as aforesaid, confiscating the truck was made on 05.8.1996.

3. The aforesaid order was carried in appeal by the respondent herein. The appellate court noted that the driver of the truck had informed the owner that the person carrying the teakwood was stated to have the necessary pass, but the driver had not verified whether in fact there was the required permit for transportation of the goods. The appellate court held that the vehicle was not in the control of the owner and he was not in the know of the fact that it would be used for transporting forest produce. Even the driver of the truck did not know that some villagers will contact him and that he would go to his village and load teakwood logs and transport them. The action of fleeing by the persons in

charge of the truck and the goods was considered to be quite natural. The presumption under section 69 of the Act was held to have been rebutted by the rozkam prepared by the Assistant Conservator of Forest in which one Duraji Sherka had stated that the logs were belonging to him and they were brought from village Ferkads when they were shifted from there. The court observed that, naturally, after four years, the necessary passes might have been lost and the persons concerned being villagers, they were not expected to preserve them for a pretty long time. Therefore, the appellate court found it difficult to hold that any forest offence was committed in respect of the logs carried by the truck. The appellate court recorded a curious observation, as under, which deserves to be quoted:

> "*Even otherwise, it is clear that the truck was taken away by the driver to load natural fertilizer from Vaghodia. Admittedly, the appellant did not know about his driver's act of taking the truck to village Dormal for loading the teakwood logs belonging to Duraji Sherka. If any offence is proved to have been committed by his driver in doing so, the poor owner of the truck who has purchased the truck under hire purchase agreement cannot be punished. There is no evidence to show that the driver had acted within the knowledge or with connivance of the appellant. Under these circumstances, the case of Shantilal M. Mistry (supra) is applicable with full force to the case on hand*".

4. In the above-referred judgment of this Court [Coram: C.V.Jani, J. ***(1995 (1) GLR 860)***], it is observed that the authorized officer is not under compulsion to confiscate the vehicle or the goods but he will take into consideration all the relevant facts like value of the forest produce as well as the vehicle and the background and the mode in which the offence was committed. That is why the Sessions Judge is empowered under section 61-D to confirm, modify or annul the order of the authorized officer. If confiscation by the authorized officer is compulsory under the relevant provisions of law, no appeal would be provided against such an order.

4.1 This court (Coram: C.V.Jani, J.) has, in ***Patel Kanjibhai Govindbhai v. State of Gujarat [1995 (2) GLR 1346]***, further observed that the requirements of section 61-B have to be read subject to the empowering section 61-A(2) and such a power has to be exercised after taking into consideration all the relevant facts including the owner's direct or indirect involvement in the commission of the offence, the care and protection taken by him against illegal use of the vehicle for committing a forest offence, and the value of the vehicle proposed to

be confiscated in the context of the value of the forest produce actually seized. Therefore, the latter part of sub-section (2) of section 61-B requiring the owner to satisfy the authorized officer that not only he but his agent and the person in charge of the vehicle also, had taken all necessary precautions against such use has to be read and interpreted in the context of his own knowledge or connivance and the precautions taken by him, since no owner of a vehicle can be expected to retain control over the driver or any other person in charge of the vehicle, or to take necessary precautions, after the vehicle is removed out of his control.

5. This court has, after referring to the recent judgments, taken the view, as under, in Special Criminal Application No.527 of 1996 decided on 04.12.2006:

> *"9. Sub-section (2) of section 61-A clearly empowers the authorized officer to order confiscation of the property together with the vehicle used in committing the forest-offence only on the basis of his satisfaction that a forest-offence was committed in respect of the property. The safeguard provided in the provisions of section 61-B, particularly in respect of the motor vehicles, provides for a notice to the registered owner of the vehicle and consideration of his objections, if any. The aforesaid power to confiscate is,*

however, restricted by the provisions of sub-section (2) under which no order of confiscation of a vehicle could be made under section 61-A if the owner of such vehicles proves to the satisfaction of the authorized officer that the vehicle was used in carrying forest produce without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the vehicle and that each of them had taken all reasonable and necessary precautions against such use. The language of the provision is clear and without any ambiguity it imposes the burden of proof on the owner of the vehicle to not only show that forest produce was carried in the vehicle without his own knowledge or connivance but his agent, if any, and the person in charge of the vehicle had also not connived at or known the fact of forest produce being carried in the vehicle. Such defence requires further proof that the owner, his agent and the person in charge of the vehicle each had taken all reasonable and necessary precautions against such use of the vehicle. In absence of such evidence as would prove to the satisfaction of the authorized officer that the owner, his agent and the person in charge of the vehicle had no knowledge and had not connived at the carrying of forest produce and that each of them had taken reasonable and necessary precautions against such use, there can hardly be any ground for interference with the order of confiscation made in exercise of the powers expressly conferred by the provisions of section 61-A and under the clear mandate contained in the provisions of section 55 of the Act. In the facts of this case, no other exceptional circumstances justifying the exercise of extraordinary powers of the court either under the provisions of section 61D or Articles 226 or 227 were canvassed to make a departure from the normal rule that the tools or vehicles used

> *in committing any forest offence shall be liable to confiscation. Such interpretation and application would be in consonance with the observations of the Supreme Court in* ***State of West Bengal v. Sujit Kumar*** *(AIR 2004 SC 1851) and the spirit and purpose of the stringent provisions of the Act.*

6. In the facts of the present case, though there was some discrepancies regarding the number of logs, it was a glaring incident of forest produce being illegally transported and followed by dangerous attempt at escaping after the truck being chased by the Assistant Conservator of Forest. The seizure of teakwood being a second incident in quick succession with the involvement of the same driver and the owner could not have permitted any inference of absence of knowledge or connivance and would have completely ruled out the possibility of any precaution having been taken either by the owner or the person in charge of the vehicle. Thus, the impugned judgment of the Sessions Court is found to be factually perverse and contrary to the express provisions of section 61-B of the Act which casts the burden of proof upon the owner of the vehicle to prove to the satisfaction of the authorized officer that the vehicle was used in carrying forest produce without his knowledge or connivance and that he, his agent and the person in charge of the vehicle, each had taken all reasonable and

necessary precautions against such use. In the facts of the present case, not only that such burden was not even attempted to be discharged, but the court held that there was no evidence to show that the driver had acted within the knowledge or connivance of the owner, and allowed the appeal on that basis.

7. Therefore, in the facts and for the reasons discussed hereinabove, the impugned judgment and order of the learned Sessions Judge in Criminal Appeal No.17 of 1996 has to be set aside as perverse and illegal. Accordingly, the petition is allowed in terms of para 12 (b) and Rule is made absolute with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)